

# SENATE RECORD VOTE ANALYSIS

106th Congress  
1st Session

Vote No. 358

November 9, 1999, 5:05 p.m.  
Page S-14377 Temp. Record

## BANKRUPTCY REFORM/Mortgage Lending and Bankruptcy

**SUBJECT:** Bankruptcy Reform Act of 1999 . . . S. 625. Gramm motion to table the Feingold (for Durbin ) amendment No. 2521.

### ACTION: MOTION TO TABLE AGREED TO, 51-46

**SYNOPSIS:** As reported, S. 625, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. It is similar to the bipartisan bill debated last session (see 105th Congress, 2nd session, vote No. 313).

**The Feingold (for Durbin) amendment** would allow a debtor to allege in bankruptcy court that a mortgage lender should have known that the debtor would be unable to repay the mortgage loan, and if the bankruptcy court agreed then the mortgage debt would be erased.

Debate was limited by unanimous consent. After debate, Senator Gramm moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

Con artists have been literally stealing homes from elderly Americans by tricking them into taking out grossly unfair mortgages on the equity in their homes that they cannot possibly repay. Our colleagues have called these thefts "predatory lending." It is not lending at all, it is theft, and it is already illegal. The Truth in Lending Act does not allow lenders to lie or hide the terms of their loans or to trick people to put up their homes as collateral for loans that they have no possible way of repaying. When people, including elderly Americans, are victimized by these illegal acts they have many remedies under current banking law, including damages and class action suits, by which they can seek redress. Our colleagues have failed to mention that those remedies exist. Instead, they have acted as though no remedies exist and have argued that the solution to this banking issue is to have it resolved

(See other side)

YEAS (51)			NAYS (46)			NOT VOTING (2)	
Republicans (50 or 94%)		Democrats (1 or 2%)	Republicans (3 or 6%)	Democrats (43 or 98%)		Republicans (1)	Democrats (1)
Abraham	Helms	Johnson	Grassley	Akaka	Kerrey	McCain <sup>-2</sup>	Hollings <sup>-2</sup>
Allard	Hutchinson		Jeffords	Baucus	Kerry		
Ashcroft	Hutchison		Specter	Bayh	Kohl		
Bennett	Inhofe			Biden	Landrieu		
Bond	Kyl			Bingaman	Lautenberg		
Brownback	Lott			Boxer	Leahy		
Bunning	Lugar			Breaux	Levin		
Burns	Mack			Bryan	Lieberman		
Campbell	McConnell			Byrd	Lincoln		
Chafee, Lincoln	Murkowski			Cleland	Mikulski		
Cochran	Nickles			Conrad	Moynihan		
Collins	Roberts			Daschle	Murray		
Coverdell	Roth			Dodd	Reed		
Craig	Santorum			Dorgan	Reid		
Crapo	Sessions			Durbin	Robb		
DeWine	Shelby			Edwards	Rockefeller		
Domenici	Smith, Bob			Feingold	Sarbanes		
Enzi	Smith, Gordon			Feinstein	Schumer		
Frist	Snowe			Graham	Torricelli		
Gorton	Stevens			Harkin	Wellstone		
Gramm	Thomas			Inouye	Wyden		
Grams	Thompson			Kennedy			
Gregg	Thurmond						
Hagel	Voinovich						
Hatch	Warner						

**VOTING PRESENT (1)**  
Fitzgerald

**EXPLANATION OF ABSENCE:**  
1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

**SYMBOLS:**  
AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

in bankruptcy court. If this amendment were to pass, we guarantee that virtually everyone who had a home and ended up in bankruptcy court would instantly claim that the fact that they were bankrupt proved that they were not good credit risks, that the mortgage lenders should have known better than to have let them borrow money, and that therefore they should not have to pay any more of their mortgage debt. This amendment is a huge invitation for abuse. We are certainly more than willing to look at ways to strengthen the enforcement of the Truth in Lending Act, especially to protect elderly Americans from con artists, but we emphatically oppose trying to enforce it through bankruptcy courts. We therefore urge our colleagues to table this amendment.

**Those opposing** the motion to table contended:

Equity predators are the bottom feeders of the credit industry. They trick elderly Americans, most of whom are on fixed incomes and many of whom are frail or sick, into signing over the only thing they own on Earth—their homes. An equity predator will seek out a widow living alone in her home. He will start by trying to get her to buy some siding, or a new roof, or a new furnace. He may be threatening; his victim may not hear well or see well enough to read the fine print; his victim may have the beginning of Alzheimers' disease and may be confused. Before she knows it, she will have been talked into getting a loan by taking out a mortgage on the equity in her home. The terms of that mortgage will be deliberately unfair. The equity predator may have lied about those terms; for instance, it is common for a victim to be told that the lender will keep part of the loan to pay the contractor for the work for which the victim took out the loan. That promise is not put in writing, the promise is not honored, and the victim does not have enough money to repay the loan. Another common practice is for a loan to have a balloon payment that comes due in one large installment that the borrower cannot possibly repay. Senator Grassley held a hearing on equity predators which he began by quoting one woman who was victimized by one of these lenders: "They did what a man with a gun in a dark alley could not do. They stole my house." The Durbin amendment would stop these predatory lenders in their tracks by giving people protection in bankruptcy court. Bankruptcy judges would be able to throw out these mortgages when they found that the lenders had deliberately given loans with terms that they knew could not be met as a means of stealing people's homes. This amendment deserves our support.